IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.984 OF 2002
IN
SUMMARY SUIT NO.3033 OF 2002

New Haven Engineering
Company Pvt. Ltd. & Ors. ..Plaintiffs.

Vs.

BSES Ltd. ..Defendants.

Mr.C.S.Balsara i/b.Ms.Lubna Vohra for the Plaintiffs.

Ms.Chandurkar with Mr.Kakalia i/b.M/s.Mulla & Mulla for the Defendants.

CORAM: S.J.VAZIFDAR, J.
DATED: 10TH JUNE, 2005

P.C. :

This is a summary suit to recover the balance price under an agreement dated 10.8.1999 by which the Plaintiff agreed to sell to the Defendant and allowed the Defendant to develope the suit property. The Defendant has already made payment of about Rs.2,86,00,000/-. The balance consideration is Rs.31,78,700/-. The payment of the balance price is to be made under clause 2 the relevant part whereof reads as under :

> "(c) the balance amount of Rs.31,78,700/- (Rupees Thirty One

> Lakhs Seventy Eight Thousand Seven Hundred Only) to the Owners and the Confirming Party in equal share being the balance consideration on completion of sale as hereinafter provided."

2. It is clear beyond any doubt that the sale has not been completed as provided in the agreement itself. The reliance upon the two powers of attorney annexed to the affidavit in rejoinder authorising the Defendant to do and perform various acts for completion of the sale, are of no assistance to the Plaintiff. The powers of attorney merely authorise the Defendant to complete the sale. One of the most important conditions for completion of sale in a transaction of this nature is for the vendor i.e. the Plaintiff, to make out a marketable title.

3. Apart from the various pleas in the affidavit in reply which prima-facie, indicate that all the requisites have not been complied with by the Plaintiff, it is pertinent to note clause 15 of the agreement which expressly reads as under :

> "15. The Owners and the Confirming Party shall make out a marketable title to the said saleable property free from all encumbrances and

> reasonable doubts and shall at their own costs and expenses pay all outstanding and clear all defects in title and all encumbrances or claims on or to the said saleable property."

Admittedly, the Plaintiffs have not made out a marketable title to the suit property. Admittedly, there is not even a title certificate sought to be furnished to the Defendants.

4. In the circumstances, the suit is not maintainable as a summary suit and the same is also premature.

5. In the circumstances, the Defendants are granted unconditional leave to defend the suit. The suit is transferred to the list of commercial causes. The Defendants to file their written statement within 4 weeks from today. Discovery and Inspection to be completed within six weeks thereafter.

6. Summons for Judgment stands disposed of accordingly.